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7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-845

13 **RICHARD A. LEPAGE**  
14 **3400 Richmond Parkway, # 3506**  
15 **Richmond, CA 94806**

**A C C U S A T I O N**

16 **Registered Nurse License No. 693303**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about November 30, 2006, the Board of Registered Nursing issued Registered  
24 Nurse License Number 693303 to Richard A. Lepage (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on June 30, 2014, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board of Registered Nursing (Board),  
Department of Consumer Affairs, under the authority of the following laws. All section  
references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

#### **STATUTORY AND REGULATORY PROVISIONS**

6. Section 2761 of the Code states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

...

7. Section 2762 of the Code states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

...

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

1        8. California Code of Regulations, title 16, section **1442**, states:

2        As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from  
3 the standard of care which, under similar circumstances, would have ordinarily been exercised by  
4 a competent registered nurse. Such an extreme departure means the repeated failure to provide  
5 nursing care as required or failure to provide care or to exercise ordinary precaution in a single  
6 situation which the nurse knew, or should have known, could have jeopardized the client's health  
7 or life.

8        9. California Code of Regulations, title 16, section **1443**, states:

9        As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the  
10 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and  
11 exercised by a competent registered nurse as described in Section 1443.5.

12       10. California Code of Regulations, title 16, section **1443.5** states:

13       A registered nurse shall be considered to be competent when he/she consistently  
14 demonstrates the ability to transfer scientific knowledge from social, biological and physical  
15 sciences in applying the nursing process, as follows:

16       (1) Formulates a nursing diagnosis through observation of the client's physical condition  
17 and behavior, and through interpretation of information obtained from the client and others,  
18 including the health team.

19       (2) Formulates a care plan, in collaboration with the client, which ensures that direct and  
20 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and  
21 for disease prevention and restorative measures.

22       (3) Performs skills essential to the kind of nursing action to be taken, explains the health  
23 treatment to the client and family and teaches the client and family how to care for the client's  
24 health needs.

25       (4) Delegates tasks to subordinates based on the legal scopes of practice of the  
26 subordinates and on the preparation and capability needed in the tasks to be delegated, and  
27 effectively supervises nursing care being given by subordinates.

28       (5) Evaluates the effectiveness of the care plan through observation of the client's physical

1 condition and behavior, signs and symptoms of illness, and reactions to treatment and through  
2 communication with the client and health team members, and modifies the plan as needed.

3 (6) Acts as the client's advocate, as circumstances require, by initiating action to improve  
4 health care or to change decisions or activities which are against the interests or wishes of the  
5 client, and by giving the client the opportunity to make informed decisions about health care  
6 before it is provided.

### 7 **DANGEROUS DRUGS/CONTROLLED SUBSTANCES**

8 11. Section **4021** of the Code states:

9 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section  
10 11053) of Division 10 of the Health and Safety Code.

11 12. Section **4022** of the Code states:

12 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use,  
13 except veterinary drugs that are labeled as such, and includes the following:

14 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without  
15 prescription," "Rx only," or words of similar import.

16 (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by  
17 or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in  
18 with the designation of the practitioner licensed to use or order use of the device.

19 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
20 prescription or furnished pursuant to Section 4006."

21 13. **Lorazepam** is the generic name for **Ativan**, a Schedule IV controlled substance as  
22 listed in Health and Safety Code section 11057 (d)(16) and is a dangerous drug per Business and  
23 Professions Code section 4022, intended for the treatment of anxiety or depression.

### 24 **COSTS**

25 14. Code section **125.3** provides, in pertinent part, that the Board may request the  
26 administrative law judge to direct a licensee found to have committed a violation or violations of  
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
28 enforcement of the case, with failure of the licensee to comply subjecting the license to not being

renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

### **FACTUAL SUMMARY**

15. On or about December 25, 2011, Respondent was employed as a registered nurse at the Golden Living Center in Santa Rosa, California. Respondent was assigned to provide nursing care to patient A,<sup>1</sup> a 91-year-old woman with a diagnosis of dementia and behavior disturbances.

16. During Respondent's shift on December 25, 2011, Respondent noted that patient A was displaying a change in symptoms typified by jerking movements. Respondent did not report this change of condition to patient A's physician or to patient A's family. Instead, Respondent called a nurse practitioner who was on call with the facility. The nurse practitioner was not authorized to make orders with regard to patient medications or treatment. She was authorized only to make suggestions or recommendations, which the nurse on duty would then relay to the patient's physician. The nurse practitioner recommended that the patient be discontinued from the drug seroquel, that the patient receive a complete blood count and a comprehensive metabolic panel, and that the patient be administered Ativan, 0.25 mg every 24 hours as needed.

17. Respondent failed to relay the nurse practitioner's recommendations to patient A's treating physician and/or family, and failed to apprise patient A's physician and/or family of patient A's change in condition. Instead, Respondent proceeded to treat the nurse practitioner's recommendation as if it was a physician's order. Respondent did the following:

a. Respondent had patient A's blood drawn, but ordered only a basic metabolic panel, instead of the complete metabolic panel recommended by the nurse practitioner.

b. Respondent administered 2.5 mg of Ativan (ten times the amount recommended by the nurse practitioner, and 2.5 times the customary maximum dose to a patient of patient A's age) to patient A. Respondent knew, at the time that he administered the incorrect dose of Ativan, that the dosage was suspiciously high, but he did not inquire into whether the dosage was incorrect. Respondent falsely noted in the record that patient A's physician, Dr. Marianella, had ordered the

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<sup>1</sup> The identity of Patient A is withheld to protect patient privacy.

1 medication. Respondent later made a false chart notation in which he claimed to have given a  
2 dose of only .25 mg, instead of the 2.5 mg dose that he actually administered.

3 c. Respondent withheld the medication seroquel from patient A.

4 18. At a later time during the same day, the nurse practitioner spoke with Respondent. At  
5 that time, the nurse practitioner learned that Respondent had administered an improper dose of  
6 Ativan as described hereinabove. Respondent attempted to convince the nurse practitioner not to  
7 report the incident to the supervisors at the facility.

8 19. After Respondent became aware that he had administered an incorrect dosage of  
9 medication to patient A, and had done so without a physician's order, Respondent failed to notify  
10 patient A's physician, her family or any of the staff at the facility regarding the medication error.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct)

13 20. Respondent is subject to disciplinary action under section 2761(a) of the Code in that  
14 he acted unprofessionally, as set forth above in paragraphs 15-19.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Falsifying Medical Records)

17 21. Respondent is subject to disciplinary action under sections 2761(a) and 2762(e) of the  
18 Code in that he committed acts of dishonesty related to the duties and functions of a licensee by  
19 falsifying and making grossly incorrect entries in a hospital and patient record pertaining to  
20 dangerous drugs and other items, as set forth above in paragraphs 15-19.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Gross Negligence/Incompetence)

23 22. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in  
24 that he acted with gross negligence and/or incompetence, as set forth above in paragraphs 15-19.

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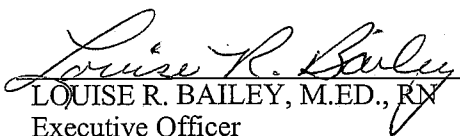
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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 693303, issued to Richard A. Lepage;
2. Ordering Richard A. Lepage to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: March 28, 2013

  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant